

EXHIBIT A

1
2 MERKLE SIEGEL &
3 FRIEDRICHSEN, P.C.
4 1325 Fourth Ave., Suite 940
5 Seattle, Washington 98101-2509
6 Phone (206)-624-9392
7 Fax (206) 624-0717

THE HONORABLE FRED VAN
SICKLE

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
AT RICHLAND

JAMES S. GORDON, JR,
a married individual d/b/a
'GORDONWORKS.COM'; OMNI
INNOVATIONS, LLC., a
Washington limited liability
company;

Plaintiffs,

v.

IMPULSE MARKETING
GROUP, INC., a
Nevada/Georgia corporation;
JEFFREY GOLDSTEIN,
individually and as part of his
marital community; PHILLIP
HUSTON, individually and as
part of his marital community;
KENNETH ADAMSON,
individually and as part of his
marital community; JOHN
DOES, I-X,

NO. CV-04-5125-FVS

**[FIRST AMENDED]
COMPLAINT FOR DAMAGES UNDER
THE CAN-SPAM ACT OF 2003 [15
U.S.C. §7701, *et seq.*]; WASHINGTON
CONSUMER PROTECTION ACT
(RCW 19.86); THE WASHINGTON
COMMERCIAL ELECTRONIC MAIL
ACT (RCW 19.190); THE IDENTITY
CRIMES ACT (RCW 9.35); RCW 19.170
et seq., and Injunctive Relief**

[JURY DEMAND]

COMES NOW, Plaintiff James S. Gordon, Jr. and brings this COMPLAINT
against defendants named herein. Plaintiff alleges the following on information and
belief:

NO. CV-05-5079-FVS
PLAINTIFF'S FIRST AMENDED
COMPLAINT

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MERKLE SIEGEL & FRIEDRICHSEN, P.C.
1325 Fourth Ave., Suite 940
Seattle, WA 98101-2509
Phone: 206-624-9392
Fax: 206-624-0717

1 **1. PARTIES**

2 1.1 Plaintiff James S. Gordon, Jr. ("Gordon") is a married individual who
3 is and was a resident of Benton and/or Franklin County, Washington, and
4 who was doing business as an interactive computer service as
5 'gordonworks.com', during the time of all acts complained of herein.
6

7 1.2 Plaintiff Omni Innovations, LLC ("Omni"), is a Washington limited
8 liability company, whose primary place of business is Pasco, Washington,
9 and which is the interactive computer service/internet access service that is
10 the registered owner of the internet domain 'Gordonworks.com', and whose
11 internet domain server received many of the unlawful emails from
12 Defendants described herein.
13

14 1.3 Defendant Impulse Marketing Group, Inc., ("Impulse") upon
15 information and belief, is a **Nevada** corporation, with its principle place of
16 business located in Georgia.
17

18 1.4 Defendant Jeffrey Goldstein ("Goldstein") is an officer, director,
19 and/or majority shareholder of Impulse, and as such controls its policies,
20 activities, and practices, including those alleged herein on behalf of Impulse.
21 All acts and practices undertaken by Goldstein on behalf of Impulse are and
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1 were for the benefit of his marital community. Defendant resides in the State
2 of Georgia and transacts or has transacted business in the State of
3 Washington and in the Eastern District of Washington.
4

5 1.5 Defendant Phil Huston ("Huston") is an officer, director, and/or
6 majority shareholder of Impulse, and as such controls its policies, activities,
7 and practices, including those alleged herein on behalf of Impulse. All acts
8 and practices undertaken by Huston on behalf of Impulse are and were for
9 the benefit of his marital community. Defendant resides in the State of
10 Georgia and transacts or has transacted business in the State of Washington
11 and in the Eastern District of Washington.
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14 1.6 Defendant Kenneth Adamson ("Adamson") is an officer, director,
15 and/or majority shareholder of Impulse, and as such controls its policies,
16 activities, and practices, including those alleged herein on behalf of Impulse.
17 All acts and practices undertaken by Huston on behalf of Impulse are and
18 were for the benefit of his marital community. Defendant resides in the State
19 of Georgia and transacts or has transacted business in the State of
20 Washington, and in the Eastern District of Washington.
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24 1.7 The actions alleged herein to have been undertaken by the defendants
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1 were undertaken by each defendant individually, were actions of which each
2 defendant had knowledge and that each defendant authorized, controlled,
3 directed, or had the ability to authorize, control or direct, and/or were actions
4 each defendant assisted and/or participated in, and are actions for which each
5 defendant is liable. Each defendant aided, abetted, assisted, and conspired
6 with the actions of each other defendant herein in that each defendant had
7 knowledge of those actions, provided assistance and benefited from those
8 actions, in whole or in part. Each of the defendants was the agent of each of
9 the other defendants, and in committing those acts herein alleged, was acting
10 within the course and scope of such agency and with the permission and
11 consent of other defendants.
12

13 II. JURISDICTION

14 2.1 This Court has original jurisdiction of the causes of action herein
15 which are brought under the CAN-SPAM Act of 2003 – 15 U.S.C. §7701, *et*
16 *seq.*, 15 U.S.C. §7707(g)(1).
17

18 2.2 The unlawful actions of the defendants were committed in the States of
19 Washington, Georgia, and in the judicial district of this Court.
20

21 2.3 The Defendants regularly transact business within the State of
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23

1 Washington by virtue of the fact that they regularly send commercial bulk
2 emails into the State, which emails are received on computers and other
3 electronic devices owned and maintained by residents of the State in the
4 State. As a result of the Defendants' acts and transactions within the State of
5 Washington, this Court has personal jurisdiction over the Defendants under
6 RCW 4.28.185(1)(a).
7

8
9 2.4 The causes of action complained of herein include allegations that
10 commercial electronic messages sent by or on behalf of the Defendants to the
11 Plaintiffs violate RCW 19.190 et seq., the Washington Commercial
12 Electronic Mail Act (CEMA) and RCW 19.86 et seq. the Washington State
13 Consumer Protection Act (CPA), the Washington Identity Crimes Act (RCW
14 9.35 et seq.)
15

16
17 2.5 This Court has diversity jurisdiction over the parties named herein as
18 plaintiffs and defendants are residents of different states, and the complaint
19 includes a prayer for relief in excess of \$75,000, exclusive of interest and
20 costs.
21

22 2.6 Jurisdiction to commence this action is conferred by 15 U.S.C. §7701,
23 *et seq.*, 15 U.S.C. §7707(g)(1); RCW 19.86.080, 19.86.090, 19.86.160, RCW
24

1 19.190.030 and RCW 4.12.020-.025.

2
3 **III. General Allegations**

4
5 3.1 Plaintiffs reallege and incorporate as though fully set forth herein, all
6 prior paragraphs herein.

7
8 3.2 Plaintiff Gordon is the registrant of the internet domain
9 “gordonworks.com”.

10 3.3 Plaintiff Omni d/b/a ‘gordonworks.com’, is an interactive computer
11 service as that term is defined in 15 U.S.C. §7703(11); 47 USC 231(e)(4);
12 and RCW 19.190.010 (7), and is the owner of an internet domain server,
13 which, among others, hosts the ‘Gordonworks.com’ domain.

14
15 3.4 Gordon provides or enables computer access by multiple users to a
16 computer server that hosts the “gordonworks.com” domain name and further
17 provides electronic mail accounts to individuals utilizing their personal
18 domain names for electronic messaging, including individuals residing
19 within the Federal judicial district in which this case is brought.

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21
22 3.5 Plaintiff Gordon is a user of the interactive computer service provided
23 by Omni and ‘gordonworks.com’, and maintains electronic mail message
24 accounts with ‘gordonworks.com, including under the address

1 jim@gordonworks.com as well as the domain name "rcw19190020.com".

2 3.6 At all times relevant to this action, each of the Plaintiffs' status as
3 Washington residents is and was public knowledge and available to
4 defendants upon request from the Plaintiffs, their domain registrar
5 information, and other readily accessible sources.
6

7 3.7 The Defendants have initiated the transmission of numerous
8 commercial email messages directed to and through Plaintiff Omni's
9 interactive computer service, and/or to and through Plaintiff Omni's domain
10 'gordonworks.com', and/or further addressed to Plaintiff Gordon's email
11 address jim@gordonworks.com, as well as to other users of Omni's
12 interactive service.
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17 **IV. Causes of Action**

18 **4.1 First Cause of Action**

19 **Violations of the Can-Spam Act of 2003 [15 U.S.C. §7701 et seq.]**

20 Plaintiff realleges all preceding paragraphs and incorporates them herein as if set
21 forth in full:
22

23 4.1.1 Plaintiffs have received thousands of commercial electronic mail
24 messages from or on behalf of defendants, sent to Omni's electronic mail
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1 server located in Benton and Franklin Counties, Washington, and/or to its
2 registered domains, including 'gordonworks.com' in violation of the CAN-
3 SPAM Act of 2003, 15 U.S.C. §7701 et seq.
4

5 4.1.2 Plaintiffs Omni and Gordon further allege that they received numerous
6 items of electronic mail from the defendants sent to the
7 'gordonworks.com' domain on Omni's server, and to email addresses
8 served thereby, that were responded to with specific requests not to
9 receive future commercial electronic mail messages, which requests went
10 unheeded for a substantial amount of time during which defendants
11 continued to send unlawful email to plaintiff in violation of 15 U.S.C.
12 §7704(a)(4).
13
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17 4.1.3 Plaintiffs further allege that the defendants sent at least one (1) separate
18 item of electronic mail to the plaintiff to an address most likely harvested
19 from domain name registration and/or by other means of anonymous internet
20 information harvesting. Said conduct was in violation of 15 U.S.C.
21 §7704(b)(1)(A)(i), and (ii).
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1 4.1.4 Plaintiffs further allege that defendants initiated the transmission of
2 commercial electronic mail to plaintiff at and through his 'gordonworks.com'
3 domain, and to individual email accounts at that domain and on its server,
4 which electronic mail included materially misleading subject lines, which
5 constitutes a violation of 15 USC 7704(a)(2).
6

7
8 4.1.5 Plaintiffs further allege that defendants initiated the transmission of
9 commercial electronic mail to plaintiff at and through the 'gordonworks.com'
10 domain, and Omni server, and to individual email accounts served thereby,
11 which electronic mail failed to provide a functioning mechanism, clearly and
12 conspicuously displayed, that a recipient may use, in a manner specified in
13 the message, to request not to receive further messages from the sender,
14 which constitutes violations of 15 USC 7704(a)(3)(A), and 7704(a)(4)(A)(ii).
15
16

17 4.1.6 Plaintiffs further allege that defendants initiated the transmission of
18 commercial electronic mail to plaintiffs at and through the
19 'gordonworks.com' domain and Omni server to individual email accounts
20 served thereby, which electronic mail failed to provide clear and conspicuous
21 notice that the mail is an "advertisement", which constitutes a violation of 15
22 USC 7704(a)(4)(A)(i).
23
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1 4.1.7 Plaintiff Omni further alleges that defendants initiated the transmission
2 of commercial electronic mail to plaintiff at and through its
3 'gordonworks.com' domain and server, and to individual email accounts
4 served thereby, which electronic mail constitutes a violation of 15 USC
5 7704(a)(2).
6

7
8 4.1.8 Plaintiff Omni further alleges that defendants initiated the transmission
9 of commercial electronic mail to plaintiff at and through its
10 'gordonworks.com' domain and Omni server, and to individual email
11 accounts served thereby, which electronic mail failed to include a physical
12 postal address, which constitutes a violation of 15 USC 7704(a)(4)(A)(iii).
13

14 4.1.9 As a proximate result of said unlawful conduct by said defendants,
15 Plaintiffs are entitled to damages for the actual monetary loss incurred or
16 statutory damages in the amount of up to \$100.00 in the case of violation of
17 Section 5(a)(1) or up to \$25.00 in the case of each violation of the other
18 subsections of Section 5 in the form of statutory damages as set forth in 15
19 U.S.C. §7707(g)(1) and (3)(A).
20

21
22 4.1.10 Plaintiffs furthermore seek a preliminary and permanent injunction
23 against the defendants for their current and future violations of the CAN-
24

1 SPAM Act of 2003 as it and members of the general public will continue to
2 incur damages as a result of the unlawful conduct of said defendants. The
3 seeking of injunctive relief by the plaintiff is specifically authorized by 15
4 U.S.C. §7707(g)(1)(A).
5

6 4.1.6 Plaintiffs furthermore seek their attorney fees and costs against the
7 defendants pursuant to 15 U.S.C. §7707(g)(4).
8

9 10 **4.2 Second and Third Causes of Action**

11 **Violations of the Washington CEMA [RCW 19.190.020 et seq.]**

12 **and the Washington Consumer Protection Act [RCW 19.86 et seq.]**

13
14 Plaintiffs reallege all preceding paragraphs and incorporates them herein as if set
15 forth in full:
16

17 4.2.1 It is a violation of RCW 19.190.020(1)(a)(b) and 19.190.030(1)(a)(b)
18 to initiate the transmission, conspire with another to initiate the transmission,
19 or assist the transmission, of a commercial electronic mail message from a
20 computer located in Washington or to an electronic mail address that the
21 sender knows, or has reason to know, is held by a Washington resident that
22 uses a third party's internet domain name without permission of the third
23 party, or otherwise misrepresents or obscures any information in identifying
24 party, or otherwise misrepresents or obscures any information in identifying
25

1 the point of origin or the transmission path of a commercial electronic mail
2 message, or contains false or misleading information in the subject line.

3
4 4.2.2 Defendants initiated the transmission, or assisted and/or conspired to
5 transmit numerous commercial electronic mail messages to Plaintiffs'
6 domain and server, and to Plaintiff Gordon's individual email account which
7 defendants knew, or had reason to know were located in the state of
8 Washington, which emails misrepresented or obscured information
9 identifying the point of origin or the transmission path, and/or which
10 contained false or misleading information in the subject line, which
11 constitutes violations of RCW 19.190 et seq.
12

13
14 4.2.3 It is further a violation of RCW 19.190.080 to "solicit, request, or take
15 any action to induce a person to provide personally identifying information
16 by means of a web page, electronic mail message, or otherwise using the
17 internet by representing oneself, either directly or by implication, to be
18 another person, without the authority or approval of such other person."
19 Numerous emails sent by Defendants and received by Plaintiffs violated this
20 provision of the CEMA.
21

22
23
24 4.2.4 Pursuant to RCW 19.190.020(1)(a)(b), each email sent in this Second

1 Cause of Action is a separate and distinct violation of RCW 19.190, and
 2 pursuant to RCW 19.190.030(1)(a)(b), (2), and (3) constitutes a separate and
 3 distinct violation of the Consumer Protection Act, RCW 19.86.
 4

5 4.2.5 Further, defendants' acts herein alleged, constitute separate and
 6 distinct violations of RCW 19.86 as they constitute unfair or deceptive acts
 7 and practices, occurring in the regular course of defendants' conduct of trade
 8 and commerce, and are unfair methods of competition, which acts have been,
 9 or are likely to be perpetrated against other residents of the State.
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 13 Plaintiffs have been damaged as a result of Defendants' statutory violations
 14 as set forth herein, in an amount to be proven at trial.
 15

16 **4.3 Fourth Cause of Action**

17 **RCW 19.170 et seq.**

18
 19 Plaintiff realleges all preceding paragraphs and incorporates them herein as if
 20 set forth in full:
 21

22 4.3.1 RCW 19.170 et seq. makes it unlawful under Washington State law to
 23 deceptively advertise or promote "free" prizes, gifts, awards, travel coupons
 24 or certificate, free item, or any other item offered in a promotion that is
 25

1 different and distinct from the goods, service, or property promoted by a
2 sponsor. The statute makes a violation of RCW 19.170 a per se violation of
3 the State Consumer Protection Act (RCW 19.86 et seq.)
4

5 4.3.2 Numerous email advertisements, ie., "spam" which Defendants
6 transmitted to Plaintiffs, as described herein, violated RCW 19.170 et seq., in
7 the following ways: In violation of RCW 19.170.030:
8

- 9 (a) The offending emails contained offers, and promotions for
10 prizes, gifts, and awards which failed to identify the name and
11 address of the promoter and the sponsor of the promotion;
12 and/or,
13 (b) failed to state the verifiable retail value of each prize offered in
14 it; and/or,
15 (c) failed to disclose the verifiable retail value and odds for each
16 prize which must be stated in immediate proximity on the same
17 page with the first listing of each prize in type at least as large as
18 the typeface used in the standard text of the offer; and/or
19 (d) failed to conspicuously disclose, if a person is required or
20 invited to view, hear, or attend a sales presentation in order to
21 claim a prize that has been awarded, may have been awarded, or
22 will be awarded, the requirement or invitation must be
23 conspicuously disclosed under subsection (7) of this section to
24 the person in the offer in bold-face type at least as large as the
25 typeface used in the standard text of the offer; and/or,
26 (e) or failed to otherwise comply with RCW 19.170.030 which
27 requires that "No item in an offer may be denominated a prize,
28 gift, award, premium, or similar term that implies the item is
free if, in order to receive the item or use the item for its

intended purpose the intended recipient is required to spend any sum of money, including but not limited to shipping fees, deposits, handling fees, payment for one item in order to receive another at no charge, or the purchase of another item or the expenditure of funds in order to make meaningful use of the item awarded in the promotion. The payment of any applicable state or federal taxes by a recipient directly to a government entity is not a violation of this section."

In violation of RCW 19.170.040:

- (a) included a prize in an offer when the promoter or sponsor knows or has reason to know that the prize will not be available in a sufficient quantity based upon the reasonably anticipated response to the offer.
- (b) failed to comply with subsection (5) which provides: "If the prize is not available for immediate delivery to the recipient, the recipient shall be given, at the promoter or sponsor's option, a rain check for the prize, the verifiable retail value of the prize in cash, or a substitute item of equal or greater verifiable retail value."
- (c) failed to comply with subsection 5(b), which provides: "If the rain check cannot be honored within thirty days, the promoter or sponsor shall mail to the person a valid check or money order for the verifiable retail value of the prize described in this chapter."
- (d) failed to comply with subsection (6), which provides: "A sponsor shall fulfill the rain check within thirty days if the person named as being responsible fails to honor it."
- (e) failed to comply with subsection (7) , which provides: "The offer shall contain the following clear and conspicuous statement of recipients' rights printed in type at least as large as the typeface used in the standard text of the offer:" If you receive a rain check in lieu of the prize, you are entitled by law to receive the prize, an item of equal or greater value, or the cash

MERKLE SIEGEL & FRIEDRICHSEN, P.C.
1325 Fourth Ave., Suite 940
Seattle, WA 98101-2509
Phone: 206-624-9392
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FIRST AMENDED COMPLAINT
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1 equivalent of the offered prize within thirty days of the date on
2 which you claimed the prize." “.

3 (f) failed to comply with subsection (8) , which provides: “It is a
4 violation of this chapter to misrepresent the quality, type, value,
5 or availability of a prize.”

6 **5. Demand for jury.** Plaintiff demands that this cause be tried to a jury.

7
8 **PRAYER FOR RELIEF**

9 Plaintiffs pray for relief as follows:

10 That the Court adjudge and decree that defendant has engaged in the conduct
11 complained of herein.

12 That the Court adjudge and decree that the conduct complained of herein
13 constitutes violations of the Federal Can-Spam Act of 2003, 15 U.S.C. §7705,
14 and that Plaintiffs are entitled to all damages provided for thereunder, as may
15 be proved at trial;

16 That the Court adjudge and decree that the conduct complained of herein
17 constitutes violations of the Washington Commercial Electronic Mail Act,
18 RCW 19.190 et seq., and that Plaintiff is entitled to all damages provided for
19 thereunder, as may be proved at trial, including but not limited to treble
20 damages of up to three times the per statutory damages provided therein for
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1 each violation committed by the defendants, in an amount to be proven at trial;

2 That the Court adjudge and decree that the conduct complained of herein
3 constitutes violations of RCW 19.170 et seq. and that Plaintiff is entitled to all
4 damages provided for thereunder, as may be proved at trial, including but not
5 limited to aggravated damages under RCW 19.170.060 of up to three times the
6 amount of statutory damages for these violations committed by the defendants
7 willfully and knowingly, and for defendants' unlawful activity.
8

9 That the Court adjudge and decree that the conduct complained of herein
10 constitutes violations of the Washington Consumer Protection Act, RCW
11 19.86 et seq., and that Plaintiff is entitled to all damages provided for
12 thereunder, as may be proved at trial;
13

14 That the Court assess civil penalties, pursuant to 19.190.040(1) of five
15 hundred dollars (\$500) per violation against defendant for each and every one
16 of the commercial electronic mail messages sent to plaintiff Gordon in
17 violation of RCW 19.190.020.
18

19 That the Court assess civil penalties, pursuant to 19.190.040(1) one thousand
20 dollars (\$1,000) per violation against defendant for each and every one of the
21 commercial electronic mail messages sent through plaintiff Gordon's
22

1 interactive computer service in violation of RCW 19.190.020.

2 That the Court assess civil penalties in the way of treble damages pursuant to
3 RCW 19.86.140, of two thousand dollars (\$2,000) for each and every one of
4 the violations of RCW 19.86 caused by the conduct complained of herein.
5

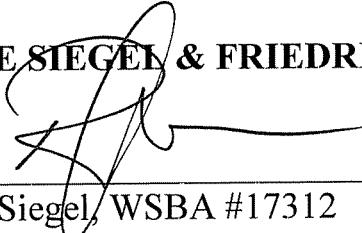
6 That the Court enter judgment pursuant to RCW19.86.140 providing that
7 Plaintiff has been injured by the conduct complained of herein, and ordering
8 that Plaintiff recover from the defendant the costs of this action, including
9 reasonable attorney's fees.
10

11 That the Court assess all allowable civil penalties, pursuant to RCW 9.35
12 against defendants for each and every violation of that statute.
13

14 That the Court order such other relief as it may deem just and proper to fully
15 and effectively remedy the effects of, and prevent future instances of, the
16 conduct complained of herein, or which may otherwise seem proper to the
17 Court.
18

19 DATED this 29th day of March, 2006.
20

21 **MERKLE SIEGEL & FRIEDRICHSEN, P.C.**
22

23 
24 Robert J. Siegel, WSBA #17312
25 Attorneys for Plaintiffs

26 FIRST AMENDED COMPLAINT
27 FOR DAMAGES, PENALTIES, ETC.

28 -18
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MARKETING, INC., ET AL

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6 **Certificate of Service**

7 I, hereby, certify that on March 29, 2006, we filed this pleading with this
8 Court. The Clerk of the Court will provide electronic notification system
9 using the CM/ECF, which will send an electronic copy of this Notice to:
10
11 Floyd E. Ivey.
12
13

14 /S/ Robert J. Siegel
15 Robert J. Siegel, WSBA #17312
16 Attorneys for Plaintiffs
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